IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.586 OF 2007

Yakub Yusuf Supariwala ..Applicant

Vs.

State of Maharashtra ..Respondents

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Mr.Iqbal Abdulla advocate for applicant
Mr.S.R.Shinde A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : MARCH 29, 2007

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant is seeking anticipatory bail in C.R.No.I-465 of 2006 of Mumbra Police Station. The said case is under Sections 498-A and 406 of IPC.

3. The applicant is the husband of the complainant Shainaz. Shaniaz lodged complaint on 9.12.2006 against the applicant. The complainant has stated in her complaint that the applicant demanded amount of dowry which was to be given at the time of marriage. Since the demand of the applicant could

not be met, the applicant started illtreating the complainant and caused her mental and physical harassment. The complainant has also stated that the applicant has misappropriated gold jewellery given to her during the marriage and other valuables. Lastly, it is stated by the complainant that the applicant has got married to some other girl.

4. The learned advocate for the applicant has submitted that the F.I.R. is dated 9.12.2006. In the F.I.R., the complainant has stated about the applicant misappropriating her gold jewellery. However, she has not stated about taking away of gold ornaments and other valuables in the statement recorded by Social Service Branch. As far as this aspect is concerned, it is seen that the Social Service Branch basically deals with the cases of cruelty and harassment to married women and other similar issues. They do not look into the offences like misappropriation etc. and hence, the enquiries made by the Social Service Branch would relate only to cruelty and harassment. Consequently statements of the witnesses would also be recorded keeping only this aspect in view.

Hence, though the complainant has not made any reference or has not stated anything to the Social Service Branch about the applicant taking away her gold ornaments that would not falsify the prosecution case.

5. Thereafter, it was submitted by Mr.Abdulla, the learned advocate appearing for the applicant that complainant has lodged complaint four months after she left the house of the applicant. In cases of this nature, it is seen that the F.I.R. is not lodged at the very first instance but it is only lodged after a lot of thought and deliberations. Any wife would not take extreme step of lodging an F.I.R. against her husband on the spur of moment but she would lodge it only after the torture becomes unbearable and she also realises that the marriage cannot continue in this way any more. Thus, the delay in lodging the complaint in cases of such nature, would also not affect the prosecution case.

6. The F.I.R. clearly makes out a case of mental cruelty and physical harassment of the applicant and it also states that the applicant has

misappropriated the gold ornaments of the complainant.

7. Looking to the material gathered by the prosecution, in my view, the material is such as to point out an accusing finger towards the present applicant. The Apex Court has observed in the decision of the **Directorate of Enforcement Vs. P.V.Prabhakar Rao reported in 1997 S.C.C. (Cri.) 978** that when the material gathered by the prosecution is such that it points out an accusing finger towards the accused, it is not a fit case to grant anticipatory bail. Moreover, the custody of the applicant would be necessary for recovery of the gold ornaments. Hence, this is not a fit case to grant anticipatory bail.

8. In view of the above, the application for anticipatory bail is rejected.

[V.K.Tahilramani, J.]